

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the instant application are respectfully requested in view of the following remarks, which place the application into condition for allowance.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-79 are pending in the application. Claims 75-78 were previously withdrawn without prejudice or disclaimer to subject matter. Claims 1-74 and 79 were rejected in the Office Action dated January 5, 2009. Claims 1, 13, 24, 35, 46, and 58 are presently amended. No new matter has been introduced. Support for this amendment is provided in the Specification, for example at the first full paragraph on page 3 of the Specification as originally filed (paragraph [0006] of the Application published as US 2006/0215210 ("as published")).

II. RECORD OF TELEPHONE INTERVIEW

Applicants' attorneys would like to thank the Examiner for the telephonic interview on March 26, 2009 with Applicants' representative, F. Dour. During the interview, the Examiner noted that he was unable to find adequate support in the cited paragraphs of the Specification for the negative limitation added in the December 2, 2008 response and entered on December 17, 2009. No opinion was formed concerning the content of the remainder of the disclosure.

No decision on patentability was reached.

III. REJECTION UNDER 35 U.S.C. §112

Claims 1-74 and 79 were rejected under 35 U.S.C. § 112, second paragraph for allegedly failing to comply with the written description requirement. In particular, the Office Action asserts that the original Specification fails to support the recitation of “wherein the energization of the receiver is not synchronized with the RF signal” in the independent claims.

As indicated in the Listing of the Claims above, the independent claims have been amended. Specifically, the recitation of “wherein the energization of the receiver is not synchronized with the rf signal” has been replaced with “when the receiver is energized during an off period of an existing preamble, the receiver can be energized a second time after a rest period, the length of which ensures detection in at least one of the time periods of a preamble pulse” to more closely track the language used in the Specification.

Specifically, the instant amendment finds support at least at the first full paragraph on page 3 of the Specification as originally filed (paragraph [0006] of the Application published as US 2006/0215210 (“as published”)).

The present clarifying amendments are made only to advance prosecution and are not intended to surrender subject matter or create estoppel as to equivalents. Applicants strongly urge that one of ordinary skill in the art would recognize that the claims as previously drafted are adequately supported by the Specification.

Applicants note that M.P.E.P. § 2163.02 explains:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, “does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.” *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an

applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983))...The subject matter of the claim need not be described literally (i.e., using the same terms or in haec verba) in order for the disclosure to satisfy the description requirement.

Emphasis added. Applicants respectfully submit that adequate support for the claims as amended in the December 2, 2008 response can be found throughout the Specification as originally filed. For example, in the Abstract, the claimed rf control system includes, *inter alia*, a controller that operates at a "high clock speed when the controller energizes the receiver. The receiver can be on for a short period, off for a short period if no preamble pulses from a remote control device are received, on for a short period, and then off for a longer period until the next cycle" *Original Specification*, page 41, hereinafter "the Specification" (*Abstract* of the Application published as US 2005/0215210, hereinafter "as published"). Emphasis added.

Further, as disclosed at least on page 3 of the Specification (paragraph [0005] as published), the claimed radio frequency (rf) control system for control of a component comprises a rf receiver associated with the component, the receiver configured for processing the rf signal. "Also, a controller is associated with the component for controlling the receiver. The controller saves power by only periodically energizing the receiver." Emphasis added. Accordingly, as disclosed in the Specification, the controller controls the energization of the receiver.

Further still, "the controller...turns the receiver 40 on and off in accordance with disclosure below [beginning at page 21 (paragraph 0063 as published)]. *Specification*, page 16

lines 16-19 (paragraph [0050] as published). Emphasis added. “[R]eferring to Figure 6, the details of the preferred logic used by the controller 56 to energize and deenergize the receiver 40 may be seen...[T]he logic to control energizing the receiver 40 begins at state 100 and proceeds to decision diamond 102, wherein it is determined whether it is time to wake up (energize) the receiver.” *Specification*, page 21, lines 1-12 (paragraphs [0063]-[0064]). Emphasis added. As can be seen in Figure 6, no rf signal is present when the decision to energize the receiver is made by the controller logic, nor is a rf signal required. As recited above, the controller determines whether it is time to wake up (energize) the receiver using logic illustrated in the flowchart of Fig. 6.

Accordingly, contrary to the assertion on page 3 of the Office Action, the energization of the receiver cannot be synchronized with the rf signal because no rf signal is present when the controller makes the decision to energize (or deenergize) the receiver. As amply described above, the Specification clearly demonstrates that “**the energization of the receiver is not synchronized with the rf signal**” as recited in the previously drafted independent claims.

The objected to recitation was noted by the Examiner to be a negative limitation. The Examiner further noted that a positive literal recitation of the limitation was not found in the cited portions of the original Specification. However, M.P.E.P. § 2173.05 notes that “a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993)”

Applicants submit that the claims as previously drafted “reasonably convey[] to the artisan that the inventor had possession...of the...claimed subject matter,” the test for sufficiency

of support as noted above. The instant amendment is merely clarifying the language to more closely match that used in the Specification.

Numbered paragraph 4 on page 3 of the Office Action cites page 3, lines 14-16 and 19-20 of the original Specification (paragraphs [0006] and [0007] as published) for the conclusion, “Therefore, the energization of the receiver is synchronized with the RF signal according to the original specification.” However, the cited portions offer no support for such a conclusion.

Lines 14-16 on page 3 of the Specification, as cited by the Office Action, state “the receiver can be energized a second time after a rest period the length of which ensures detection in at least one of the time periods of a preamble pulse if a preamble has been generated.” The second cited portion, lines 19-20, recites, “In any case, once a preamble is sensed, the receiver remains energized to detect the ensuing command signal.” As one of ordinary skill in the art would recognize, the receiver must be energized to receive a signal. However, there is no disclosure of a synchronization step and no disclosure of a signal from the remote to which any other component is synchronized. Accordingly, the relied upon portions of the original Specification provide no support for the conclusion reached in the Office Action.

In fact, implicit in the disclosure, at least at page 21, lines 12-13 (paragraph [0064] as published), which speaks of the “clock frequency of the controller 56,” and obvious to one of ordinary skill in the art, is that the controller includes a clock which functions at least to “determine whether it is time to wake up (energize) the receiver.” *Instant Specification*, page 21, lines 11-12 (paragraph [0064] as published).

Applicants respectfully submit that as noted above the previously included limitation of **“the energization of the receiver is not synchronized with the rf signal”** finds ample support

in the original Specification to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time of filing. Accordingly, Applicants respectfully submit that the § 112 rejections of the previous claims were in error.

CONCLUSION

In view of the foregoing, it is believed that the present application is in condition for allowance. Accordingly, Applicants' attorneys respectfully request that a timely Notice of Allowance be issued in this case.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: 
Ronald R. Santucci
Reg. No. 28,988

Frederick W. Dour
Reg. No. 39,174

Telephone: (212) 588-0800
Facsimile: (212) 588-0500